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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,373	10/29/2003	Gregory Winfield Gorman	412589	6754
7590 Gregory W. Gorman 473 Wyoming Circle Golden, CO 80403				
		EXAMINER CHEVALIER, ALICIA ANN		
		ART UNIT 1783		
		MAIL DATE 10/04/2010		
		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/696,373

**Applicant(s)**

GORMAN, GREGORY WINFIELD

**Examiner**

ALICIA CHEVALIER

**Art Unit**

1783

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5, 6, 8, 21, 22 and 25-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8, 21, 22 and 25-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**RESPONSE TO AMENDMENT**

1. Claims 1-3, 5, 6, 8, 21, 22, 25-32 are pending in the application, claims 4, 7, 9-20, 23 and 24 have been cancelled.
2. Amendments to the claims, filed on June 28, 2010, have been entered in the above-identified application.

***WITHDRAWN REJECTIONS***

3. The 35 U.S.C. §112, 1<sup>st</sup> paragraph, rejections made of record in the office action mailed December 28, 2009, pages 3-4, paragraph #8 have been withdrawn due to Applicant's arguments in the response filed June 28, 2010.

***REJECTIONS***

4. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

***Claim Rejections - 35 USC § 112***

5. Claims 1-3, 5, 6, 8, 21, 22 and 25-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

First, claims 1 and 25 fail to set forth the composition or structure of the container and the symbol. Second, Applicant has not set forth or describe the "environment where the receptacle is situated." Third, Applicant has not provide guidance on the meaning of "water reactivities" or how one of ordinary skill in the art would construct a container and symbol to produce the claimed "water reactivities" effect. Therefore, since specification does not allow one of ordinary skill in the art to reproduce the claimed invention the claims fail to comply with the written description requirement

6. Claims 1-3, 5, 6, 8, 21, 22 and 25-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 25 are indefinite because they fail to set forth the composition or structure of the container and only claim properties of the container. Claims that merely set forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future. Ex parte Slob (PO BdApp) 157 USPQ 172. In the instant case, claims 1 and 25 recite "wherein the difference in water reactivates renders said symbol visually distinct from said container when said container holds said fluid and when a temperature of said container is reduced to a condensation point," which is vague, indefinite, and functional because the temperature at the condensation point varies depending on the type of the material used for the container and the fluid.

The limitation “when a temperature of said container is reduced to a condensation point” in claims 1 and 25 is unclear and renders the claims vague and indefinite. It is unclear what condensation point the container temperature is being lowered to, water, the fluid in the container, the container's material, etc. Furthermore, if it's the temperature at the condensation point for water or the fluid, at what altitudes the temperature being measured, given that the condensation temperature point for water will be different at sea level than at high altitudes.

The limitation “water reactivity” in claims 1 and 25 is unclear and renders the claims vague and indefinite. It is unclear what the reactivity is, beading, absorption, repelling, attraction, etc..

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

7. Applicant's arguments in the response filed June 28, 2010 regarding the 35 U.S.C. §112, 1<sup>st</sup> paragraph, rejections of record have been considered but are moot since the rejections have been withdrawn.

8. Applicant's arguments in the response filed June 28, 2010 regarding the 35 U.S.C. §112, 2<sup>nd</sup> paragraph, rejections of record have been carefully considered but are deemed unpersuasive.

Applicant argues that those of skill in the art would clearly understand what is claimed in amended claims 1 and 25. Furthermore, Applicant argues that these terms are both clear and distinct and are not “insolubly ambiguous” in light of paragraphs 00029-0047 of the specification.

The examiner still maintains that these claims and terms are unclear, because they do not set forth structure or materials of the containers or symbols or fluids or environments, etc.

Furthermore, Applicant's specification and arguments have not made the claims clearer or distinct.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Thursday from 11:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia Chevalier/  
Primary Examiner, Art Unit 1783  
10/1/2010